

**MINUTES**

**MONTANA SENATE  
56th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY**

**Call to Order:** By **CHAIRMAN AL BISHOP**, on January 15, 1999 at  
3:00 P.M., in Room 410 Capitol.

**ROLL CALL**

**Members Present:**

Sen. Al Bishop, Chairman (R)  
Sen. Fred Thomas, Vice Chairman (R)  
Sen. Sue Bartlett (D)  
Sen. Dale Berry (R)  
Sen. John C. Bohlinger (R)  
Sen. Chris Christiaens (D)  
Sen. Bob DePratu (R)  
Sen. Dorothy Eck (D)  
Sen. Eve Franklin (D)  
Sen. Duane Grimes (R)  
Sen. Don Hargrove (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Susan Fox, Legislative Branch  
Martha McGee, Committee Secretary

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 99, SB 101, 1/9/1999  
Executive Action:

**HEARING ON SB 99**

**Sponsor:** SEN. JON TESTER, SD 45, Big Sandy

**Proponents:** Mark O'Keefe, State Auditor,  
Commissioner of Insurance

**Mrs. Linda Wolfe, Private Citizen, Ravalli**

**Susan Witte, Representing Blue Cross and  
Blue Shield of Montana**

**Scott Asay, General Counsel Operating Officer  
Man-to-Man Services**

**Tim Shanks, Montana Police Protective Association**

**Doug Neil, Lobbyist, Montana State Fireman's  
Association**

**Jim Smith, Executive Secretary, Montana Sheriffs'  
and Peace Officers' Association**

**Troy McGee, Chief of Police, Helena, Representing  
the Montana Chief of Police Assoc.**

**Claudia Clifford, Insurance Specialist,  
Commissioner of Insurances Office**

**Gregory Noose, Administrator of the Montana  
Law Enforcement Academy**

**Perry Johnson, Sheriff of Ravalli County**

**Opponents:           None**

**Opening Statement by Sponsor:**

**SEN. JON TESTER, SD 45**, which encompasses the counties of Choteau, Hill and Libby. It is indeed a pleasure for him to present to the Committee **SB 99**. It is a simple bill that is a matter of fairness. The title describes the bill clearly and allows the spouse or dependents of a peace officer, or fire fighter, or volunteer fire fighter who dies within the course and scope of employment to remain on their group health insurance plans. Under current law, if you are a state employee and die under any circumstances, while you are employed with the state, your spouse, or dependents can stay on the State of Montana's group policy, by simply paying the premium.

This bill does not go that far and it doesn't prevent any local government from doing more for their employees. It does not cost local government anything because the surviving spouse has to pay the full premium. There is no requirement for local or state government to pay any portion of the premium, just the surviving spouse, so they can stay and be a part of the group health insurance policy. The State of Montana and many local governments allow retirees to stay on the group health policy when they retire. This bill provides a survivor of a spouse exactly the benefit he or she would have had, if that person would have lived and been able to retire. How many people are there? Not many, an average of one per year, statewide. And if

you are a widow of one of those officers, or fire fighters this is a very grave omission. The most important issue with this bill is that it is a fairness issue. He visited a memorial that we have on Capitol grounds for law enforcement officers who died in the line of duty. Without this bill, for some of those officers, the first thing their employer would do to honor their service, is to take away the health insurance from their widows and children. That is wrong and we should fix it.

He said he is very proud to have **Mark O'Keefe, State Auditor, Commissioner of Insurance** and **Mrs. Linda Wolfe**, who is the driving force behind this bill, present at this hearing. He would ask them to lead off as proponents of this bill. If the Committee has any question after the proponents, he will be available.

**Proponent's Testimony:**

**Mark O'Keefe, State Auditor**, said it was his privilege to be at this hearing because his name is on this bill. He had it drafted, he had it drafted for a simple reason. He will tell them a story in just a minute, but first he wants to make a couple of comments first.

Many of our police officers, fire fighters, peace officers and game wardens are truly some of the most respected members of government by the people of Montana, at any level. While they each have very distinct roles in their individual communities, their jobs all have a common aspect that they must recognize. They have occupational hazards that sometimes lead to them putting their lives on the line for us.

This bill came about because of the woman he'd like to introduce next, **Linda Wolfe**. He gave a seminar on Long Term Care Insurance in Missoula in early November of this year. It is typical at these seminars, he speaks for about an hour and fifteen minutes, he had about 120 people in the audience. He talked about the benefits and the cost of long term care. When he finishes these presentations usually he will spend 45 - 1 hour answering questions one on one with the their constituents, and his constituents in the individual communities in the state.

He did that in Missoula on this cold November morning and one woman sat in the back of the room and waited patiently for him to finish with all of the people that came to the hearing. She came up and sat down, the very last person in the Senior Citizen Center with him and she said, "I think the insurance laws of this state are unfair, and I want to change them, and I don't know how to do it." He said, "tell me your story." And she did. The

result of that story was that at this point, with this Committee today, they have a bill to take care of the other victims involved when a law enforcement official loses their life in the line of duty for the people of the State of Montana, **SB 99**. This bill also covers game wardens and the reason he brings that up, is that they don't see a lot of game wardens losing their lives in this state, but he just finished reading a new novel "Eye of the Needle". In that novel, a brand new novel, 2 months old, one of the protagonists made his reputation as a bad guy by murdering a Montana game warden in the mountains of the Bitterroot. That type of philosophy and mentality is wrong, game wardens are at risk as well. **Ms. Linda Wolfe** told him her story, and they have **SB 99**, today. **Senator Baucus** office working right now on federal legislation to do the same thing. Hopefully the Committee will give this bill a do pass and with that he has great pleasure in introducing **Mrs. Linda Wolfe**.

**Mrs. Linda Wolfe** said her life was forever changed on August 24, 1997. Her husband William, a Ravalli, County Deputy Sheriff collapsed and died at the Law Enforcement Academy. His death has affected her and her family greatly in some ways that she never expected. In spite of the fact, Bill was on active duty, completing required training, his health insurance coverage and hers has ended.

Ravalli County had a self insurance plan in August 1997. That plan does not provide the option for continued health insurance coverage upon the death of the primary insurer. She talked to the County Commissioners, she listened to the representative from MACO (Montana Association Cities and Counties) which is the health insurance provider. No one can tell her why she cannot continue her coverage. That all sounds very complex, but it means that she and other widows and children of public servants are struggling to keep our affordable health insurance coverage. COBRA (Comprehensive Omnibus Budget Reduction Act) coverage has provided a stop gap, keeping her at the group rate for 36 months.

In August of 2000, that option ends. She will be 55 years old and only eligible for individual coverage at a very high rate. She doesn't want a hand out. She is willing to pay the on-going premium to keep her insurance coverage, but the premium must be affordable. Her current premium for the COBRA coverage is \$240.00 per month on a policy with \$1,000.00 deductible. The portability plan, her best option for individual coverage, with fewer benefits would be \$420.00 per month, who knows how much higher it will be in 2 years. The Committee is in a position to help the families which face this tragedy in the future. She knows this bill will not help her get the health insurance coverage she will need as she gets older, but other families of

peace officers and fire fighters who die in the service of the citizens of Montana should know that their health insurance will not die with their loved ones. Please support and pass **SB 99**.

**Susan Witte, Representing, Blue Cross/ Blue Shield**, said they support this bill as long as there is a few amendments in it. Right now the bill applies to both individual and group policies. It should be only applicable to group policies. She believes their situation is a group policy rather than individual. They do have some amendments striking the terms, "individual" throughout the bill. They would also support it with a change in the effective date to give disability insurers time to comply with the changes required by this bill. They would hope that the effective date would be upon renewal or issuance of policies issued after January 1st of next year.

**EXHIBIT (phs11a01)**

**Scott Asay, General Counsel Operating Officer for Man-to-Man Services**, they provide administrative services to various self funded plans throughout the state. They are in support of the bill, but they also have several recommendations. Most of them are in conjunction with COBRA and this is a very short bill, he believes that it is inevitable that questions will arise as this bill is enacted.

He would like to look to COBRA and hope that some of these issues that arise under COBRA can be addressed in this bill. One of those is the amount of payment for the coverage. Its easy to determine what the premium of the cost for a full insured plan would be. When you get into self funded plans, when you get into where the employer pays a portion, it becomes more complex. COBRA addresses how those premiums are determined. It would be helpful if this bill contained the information on that, otherwise those who administer these plans will be looking to COBRA, rather than the Montana statutes, or looking any where really to figure out how to price the premiums.

Another situation arises under COBRA, is sometimes people will just take dental or vision, or they will take the whole health package that includes dental, or vision, or they will just take health without the dental and vision, COBRA addresses how that is to be dealt with. This doesn't. Can a spouse change their deductible, is there a provision where they can bring new dependents on to the plan under this bill. It is not addressed. Again, they could look to COBRA, they could make a good faith effort to determine how to handle these situations, but it would be nice if these were addressed within the statute. Does the bill allow coverage for ever, for example a 5 year old child, can

they stay on the plan until they are 29, or until they are 65 and until they are 99? That is another issue. They believe these are legitimate issues that will arise. Its inevitable that they will, lets say that a dependent child continues coverage through this and they later marry, can a new spouse come on, can the children from that marriage, are they eligible to be covered under the plan if the spouse re-marries, following a death, can that new spouse come on? These are things that are inevitable that will come up and without it being addressed in the statute, they are let to either look at COBRA or the functional equivalent through public employers to try to determine how to resolve these issues.

The other issue that he would like to address is the applicability of this statute to MEWAs (Multiple Employer Welfare Arrangements). There is a federal law, ERISA (Employee Retirement Income Security Act) that has a very complex relationship with self funded MEWAs and it is referenced in the statute. He worked with the Insurance Commissioner's Office toward the development of Chapter 35 of the Montana annotated Code which addresses MEWAs and as they developed those portions of the Code, he believes the Insurance Commissioner's Office, as well as themselves were very sensitive to the interplay between the state regulations and self funded MEWAs/ERISA roles.

He thinks they have worked out a good compromise, in that the current MEWA statute allows the state to regulate MEWAs to the extent that they can require more stringent standards of conduct, provide greater protection of plan for participants, require information of disclosure, specify levels of reserves and contributions, but he thinks where the statutes begin to define dependents, under MEWAs, it might be preempted by ERISA. His recommendation would be that the reference to MEWAs be taken out. He doesn't know of any MEWAs that cover the individuals that are designated in the bill. He appreciates the Committee's time.

**Tim Shanks, Montana Police Protective Association**, stands before the Committee and hopes they would support this bill. It is an important bill. This is something that needs to be corrected. Please support the bill. Thank you.

**Doug Neil, Lobbyist, Montana State Fireman's Association**, read his written testimony.

**EXHIBIT** (phs11a02)

**Jim Smith, Executive Secretary, Montana Sheriffs' and Peace Officers' Association**, two little words, "simple fairness."

**SEN. TESTER** said it, he repeats it "simple fairness" is what they are seeking though this bill. They certainly support the bill. If the Committee just keeps those two words in mind as they

process this bill and the amendments that have been offered, it will be okay. Simple fairness, that is what **Mrs. Wolfe** is asking for.

**Troy McGee, Chief of Police, Helena, Representing the Montana Chief of Police Association**, doesn't have nothing more to add. He thinks the bill has been discussed very well. They are in strong support of **SB 99**.

**Claudia Clifford, Insurance Specialist, Commissioner of Insurance Office**, said she has been asked by former **Representative Dorothy A. Cody** to submit to the Committee a letter in support of **SB 99**. Twenty three years ago, her husband a Roosevelt County Sheriff died of a heart attack on the job. She was a 40 year old widow with seven children and left with the responsibility of their health care. She is very sympathetic to the goals of this legislation. Also to assist with many of the concerns that **Mr. Asay** has, she thinks they can answer for him and aren't necessarily in need of amending the bill.

**EXHIBIT** (ph

s11a03)

**Gregory Noose, Administrator of the Montana Law Enforcement Academy**, said it was his sad duty to be the Administrator during the time that **Bill Wolfe** died on the first day of his basic training in 1997. Sadly they did not have the chance to get to know him, as he would have completed his training and engaged them in his career as a peace officer, but he is heartened by the fact that **Mrs. Wolfe** has been a great friend to the Academy and has come to know them and influence their operation among students since that time. He supports her in her effort to bring about this bill.

He began his career as a peace officer in 1973 and unfortunately it is long enough to remember those game wardens (named them), who have been feloniously killed in Montana in the line of duty. In that time he has actually seen the sons of those individuals come to complete their training at the Academy, who can attest to the long term impact that this bill would have upon the lives of those dependents who have given their life. He is sure the same holds true for other persons mentioned in this bill and he hopes they can work out the details and provide support to give peace of mind to 1,885 peace officers and a myriad of volunteer fire fighters and other professionals who would be assured that their dependents would be cared for through this change in the law.

**Perry Johnson, Sheriff of Ravalli County**, said he did get to know **Bill Wolfe**, a little bit. **Bill Wolfe** was the kind of guy that was always the first one to answer his radio. He wanted to be

the first guy on the scene. He really wanted to be a policeman. This bill is going to be for **Bill**. His family is here, **Linda Wolfe**, his daughter, his son-in-law, and his granddaughter is here. He brought his own son along. He is the father of four and husband of one. In his county, not everybody can say that. This bill is about fairness, its about sacrifice, its about service to the community and its about respected occupations. He heartily endorses this bill and he leaves them with just one thing. At the Law Enforcement Memorials across the Nation, there is a plaque on many of them that read, "These memorials are so people will not remember the way these men and women died, but the way they lived." Thank you.

**Opponents' Testimony:**      **None**

**Questions from Committee Members and Responses:**

**SEN. DUANE GRIMES** asked **Ms. Claudia Clifford**, if they anticipate using Administrative Rules to clear up some of the ambiguities that were mentioned by one of the proponents, the difficulties with who is covered for how long, premium rates, and others, do you anticipate working on that any further than this bill?

**Claudia Clifford** answered they could do that. She thinks the concept of the bill is that spouse and the dependents would stay on as members of the group. They would follow the member group rule, so you wouldn't have the opportunity to change the benefits or increase the deductibles or whatever. It is not necessarily that she agrees with all the problems that have been mentioned.

**SEN. GRIMES** said so her understanding would be that it would apply to the people that were on the plan at the time of the accident or injury and no further?

**Claudia Clifford** said the spouse and family members would stay on the group plan like they had been on, following the same group rules, same deductible, same benefits as the rest of the group.

**SEN. GRIMES** asked about the language on Line 19 it says, "within the course and scope of employment." He is wondering about how tight the language is. Is that a legal term, that is clearly defined in statute somewhere, so they will know if it will be something that occurs as a direct result of the employment, rather than defaulting to anybody that is injured anywhere while they are employed? Does she see what he means?

**Claudia Clifford** answered she believes it is. This bill was drafted by one of their attorneys who had worked for the Department of Justice. She thinks he feels confident about it



and they had discussions on the term too. There is legal meaning in that.

**SEN. GRIMES** asked her to check on that for the Committee. He wants to make sure they know what it would apply to.

**SEN. EVE FRANKLIN** said she had a technical question to ask **Mark O'Keefe, or Ms. Clifford**, about the issue that **Susan Witte** brought up in regard to their going to recommend an amendment to change the effective date to new issues, and her immediate response to that is, that gee that is a long time. It doesn't cover a whole group of people who really deserve to have the coverage, for just new issued policies. Then she brought up the issue of allowing companies the opportunity to get ready, do they think that they can come up with a good mechanism to allow insurance companies to get ready without significantly changing the intent of this legislation.

**Mark O'Keefe** answered that he thinks it is possible if the Committee chooses to go that route to do that. They designed this bill specifically with the language effective on passage on approval because if a law enforcement officer loses his life this June, they want their family to be taken care of. Regardless of the fact that the group renewal doesn't come up until January of the year 2000. Yes there is a little bit of a risk and yes, perhaps they will collect \$40.00 less a month from the dependents under the group. Frankly, he doesn't care, it is matter of fairness. It is a real life tragedy for these folks. He thinks the insurance companies should suck it up on this one.

*{Tape : 1; Side : A; Approx. Time Counter : 0 - 35}*

**SEN. GRIMES** said he had a question to ask **Susan Witte, Blue Cross, Blue Shield**. He likes the intent of the bill and he appreciates the spirit with which it was brought forward, but his question would be from an insurance perspective, assuming it is applied to group disability, are there any significant actuarially costs that they would expect as a result of applying this for those groups insurance policies for peace officers, game wardens, or fire fighters? Would there be any significant cost increase? Cost of insurance is what he means, that is the question he is asking.

**Susan Witte** answered she didn't believe there would any significant actuarial cost.

**SEN. GRIMES** said he needs to explore this because he wants to make a point and on the other hand he wants to find out if he is incorrect. So if this were to expand in the future to also include legislators, lets say, or state employees, he question would be would it then sooner or later the cost begin to increase for those group plans for members on the group plan?

**Susan Witte** answered she didn't believe so, only because that premium takes care of the group. She thinks the group would be charged whatever premium for insuring the group. She is not 100% sure on the answer to that.

**SEN. GRIMES** said okay. His follow up question because they anticipated that the person on the plan who is diseased would still belong.

**SEN. BARTLETT** asked **Mark O'Keefe** why wouldn't this apply for all public employees and are they going to have an equal protection problem if they don't?

**Mark O'Keefe** answered that they already have this coverage. They have an equal protection problem. If they are killed playing touch football this weekend with your kids, **Senator Grimes**, and you fall over of a heart attack, your dependents still can stay on the group plan, because you are a state employee. And you are covered by a group plan that the state employees currently have that they are covered. That is why correctional officers aren't in the bill. They already have it. The individuals who don't have it are those law enforcement officials who are working beyond state government and local government. Could the Clerk and Records' Association come in for their employees to get it? You bet they could, but they didn't. The law enforcement community did. There is a question of fairness there. Since we as state employees and our dependents already have the protection, it makes it real difficult for them to stretch state employees to say county employees shouldn't. But that hasn't been raised. The League of Cities Towns and MACO were aware of this bill. They had the opportunity to expand it and they didn't. So they think that the Committee needs to remember that state employees already have this coverage, and legislators or anybody else who is under the state plan. It's the county law enforcement, the city firemen who don't, and they are trying to extend to them.

**SEN. BARTLETT** said she still wants to know why they won't have an equal protection problem for the rest of the county employees, the rest of the city employees, and other public employees who do not currently have this possibility available to them if they

carve out a specific group of people who are public employees who will have this opportunity available to them?

**Mark O'Keefe** said he couldn't answer that not being an attorney, but they already have that exposure now with the way the state plan is set up. His feeling would be that since state employees have it, they probably have that exposure right now in terms of equal protection. Expanding it to include more people should limit their exposure, not expand it.

**SEN. BERRY** said when he reads this language, and he is sure the intent, they described the people who qualify in the bill, and they expressed volunteer fire fighters dies within the scope of the employment, he is assuming this a retroactive intent. Does **Mrs. Wolfe** qualify for this?

**Mark O'Keefe** answered no, there is no retroactive intent, nor was that **Mrs. Wolfe's** intent in bring it forward. This was intended for future cases.

**SEN. BERRY** asked if that was an issue, you are an attorney?

**Mark O'Keefe** answered he is not an attorney.

**SEN. BERRY** asked if there was a small number, he remembers seeing this early of people who fit this category, 20 to 25 people?

**Mark O'Keefe** answered perhaps **Greg Noose** could answer that. He thinks on an average in their testimony they said no more than one a year. It is a very small number of people who lose their lives in performing those duties. **Mrs. Linda Wolfe** responded to his figures, clarifying it was 28 people in 40 years.

**SEN. HARGROVE** said when he looked at this bill it seemed like the obvious intent is for those people who are at risk that normal people aren't. Yet, he assumes in the military they call it the line of duty, if they aren't for example breaking the law, in other words they are driving on their way home and somebody slams into them, that would still be the case. Would they still be covered without this, is that true?

**Mark O'Keefe** said it was his understanding it is in a line of duty requirement that they have included under the language that **SEN. GRIMES** asked about earlier. That language was pulled from the codes that the Attorney General has, and he believes that it defines clearly what the line of duty is for law enforcement personnel in the state. They will make sure that the Committee gets a copy of exactly where that is covered.

He told the Committee Members it is very clear that this legislation is only effective and only comes into play if the dependents of the individual who lost their life still wants the coverage, if dependents continue to pay for the coverage, if the dependents were insured under the terms of the policy before the death, and if the dependents remain faithful to the terms of the policy. There are a number of conditions within the law that state to the dependents, you now have a choice. They must actively choose in order for this law to apply to effect you.

That was the goal not to go back and try and correct the past, just simply give the option to the dependents in the future.

**SEN. CHRISTIAENS** asked, there was a concern on the part of TPAs this might have a problem with the definition of MEWAs and ERISA, he thought with **Mark O'Keefe's** knowledge of that and the drafting of the bill, as long as the benefits are not changed, and under the same conditions of the previous policy, that's why it could. Is he right or wrong?

**Mark O'Keefe** answered he thinks that is true. They have worked with this. When he first met **Mrs. Linda Wolfe**, he said, "Linda it is not simple as simply changing the state law." Because they only regulate only approximately 45% of the market place in Montana, private insurers, they also may have to make some changes in ERISA at the federal level to get to the self funded and to get to the MEWAs. He is calling it to the attention of the Committee that they are working with **Senator Baucus's Office**, and they are researching right now what federal changes might be required in order to require MEWAs and self insured groups to offer the same benefit. They are primarily focusing within this bill on that private segment of the market place that they regulate. He thinks **Mrs. Wolfe** understood that and has been in communication, as they have, with the **Congressional Delegation** about the need for this legislation at the federal level.

**SEN. GRIMES** asked what was the purpose of including individual plans in the bill, he is trying to think of a case where that would work. Would that be in small rural areas where they would have single plan or something?

**Claudia Clifford** answered yes. That is a real possibility that you have a single law enforcement officer working in jurisdiction and they just have an individual plan for that officer.

**Closing by Sponsor:**

**SEN. JON TESTER** said he would like to thank the Committee for a very good hearing. He'd also like to thank all those who testified, particular **Mrs. Linda Wolfe**. When they run as Senators for office they have visions of doing something that is very good for the state of Montana. He would like to go back and quote what **SEN. HARP** said on opening day, "and that is to leave this place in a better way, than when they found it." He thinks this bill would fit his criteria and he would urge their do pass on this bill, **SB 99**.

*{Tape : 1; Side : B; Approx. Time Counter : 0 - 20}*

HEARING ON SB 101

Sponsor: **SEN. EVE FRANKLIN, SD 21, Great Falls**

Proponents: **Mark O'Keefe, State Auditor, Commissioner of Insurance and Securities**  
**Jim Smith, Representing Montana State Pharmaceutical Association**  
**Andrea Merrill, Executive Director Mental Health Association of MT**  
**Verner Bertlesen, Montana Senior Citizens' Association**  
**Mona Jamison, Attorney, Representing Montana Chapter of the Physical Therapy Association/Shodair Childrens' Hospital**  
**Rebecca Moog, Montana Womens' Lobby**  
**Gloria Hermanson, Montana Psychological Association**  
**Kip Smith, Associate Director, Montana Primary Care Association**  
**Mary McCue, Association of Licensed Professional Counselors**  
**Jerry Loendorf, Montana Medical Association**  
**Jim Ahrens, Montana Hospital Association**  
**Jacqueline Lenmark, American Insurance Association**  
**Susan Witte, Blue Cross, and Blue Shield**  
**Don Allen, Representing Montana Medical Benefit Plan**  
**Sami Butler, Montana Nurses' Association**

**Opponents:**        **Greg Van Horssen, Lobbyist State Farm  
Insurance Company**

**Jon Metropoulos, Lobbyist, Farmers  
Insurance Group**

**Mike Baker, Lobbyist, American Council of  
Life Insurance**

**Opening Statement by Sponsor:**

**SEN. EVE FRANKLIN, SD, 21, Cascade County, the home of Charlie Russell** said she has in front of the Committee today, the responsibility of presenting to them **SB 103**. This bill comes at the request of the **Auditor's Office** and it addresses, what she thinks is an increasing challenging issue for this Committee and society in general and that is striking the balance between the individual's right to privacy, which is one that we hold quite dear and balancing that with societies need to perform certain legitimate functions of commerce and health care.

The Committee has a packet of information that was prepared by the Auditor's Office. It is the same packet of information that was made available to her to prepare for this bill and it will give the Committee some of the same background. Some of the literature that she was able to read included some pretty compelling material. She is just going to read one paragraph to the Committee. "According to one estimate a typical patients hospital records is seen by an average of 77 people." And this becomes an increasingly challenging issue as information flow itself becomes itself a very easy mechanism within our society. Its no longer a question of people operating with green eye shades and pencils, take down a few things and pass them out, but the repetitively with which information is able to be made available, makes this even a more pressing issue.

**Senate Bill 103** restricts what is known as secondary disclosures by insurance insurers, private personally identifiable information to third parties. They will see in their packet a chart there showing all the people who have access to your private health care information.

**EXHIBIT (phs11a04) EXHIBIT (phs11a05)**

If they look at the blue arrows this bill does not affect the blue arrows. In other words with authorization as per usual, we can give our permission to have our insurer see our records. Physicians do it all the time, health care folks do it all the

time. You go to a physician your information becomes available to your provider and then to your insurer. It also doesn't effect the red arrows. Those are what is considered legitimate secondary reasons that any of these individuals, consumers reporting agencies, businesses, other insurance, claim handlers, law enforcement, all those may have some very legitimate reasons to see your information. What it does do is create a sort of gate. That secondary receiver of information can't pass that along without your specific written information to marketers, brokers, and those people who might sell your very private personal information for profit.

It might be for marketing purposes. It might be for a whole host of commercial purposes that you might not really feel you want out in the general public. What remains protected is all legitimate functions that an individual with those agencies might need to have your information. It does require that they maintain a record for three years of that disclosure, which health providers do. Any insurer who gives your information without your permission, does have to maintain a record. So it is a right to know issue for you should you ever have some reason to question, you at least will know, and then they have to purge their records.

She would like to refer them to one more incident, one more snippet of information, 35% of Fortune 500 companies check medical records before they hire or promote. There is a great deal of information out there. She is not a particularly paranoid individual. She always says she doesn't really care what people say about her as long as she is not there because she doesn't know. So she is not particularly paranoid, but she thinks when you are talking about things that are close to your heart, medications that you are on, whether or not you are incontinent, whether you have a psychiatric history, whether you ever received medication for depression, whether you have sexual dysfunction, whether you have diabetes. There are certain people who may need to know that, but there is a lot of people who don't need to know that, or purchase that information without your permission. There are others who will be able to speak to the mechanics of the bill and she reserves the right to close.

### **Proponents' Testimony:**

#### **Mark O'Keefe, State Auditor, and Insurance and Securities**

**Commissioner** said he was here to speak today on a topic that he thinks they will agree warrants some serious attention. He is talking about one of the dangers of the technical revolution that we are in. He is talking about the lack of privacy, specifically as it pertains to medical information. He spent a lot time as the Insurance Commissioner watching other States. He is a member

of the National Association of Insurance Commissioners' and quite often, his philosophy is that if you see a problem that is presently occurring in California, Texas, Illinois, or New York, that's not occurring in Montana, you'd better fix it now, because it will be here in 5 years. And quite often we're able to put fixes into the law and into the rules in this State that avoid problems, because they are coming down the line a few years later.

That's not necessarily the case with this particular bill before the Committee today. The privacy of our most cherished and personal information, our medical records, is at risk today in Montana. Medical records are in fact family secrets. We all have deep dark family medical secrets that we might be willing to talk to our spouses or our physicians about, but we don't want that information sold or put on the INTERNET. Some people may tell you today that these problems don't exist in Montana, private and medical records are not at risk in Montana. He will tell you that is not true and he believes that both they and himself know better than that.

In their packets that they handed out, they will find recent articles from both the Great Falls Tribune, and the Washington Post about insurance and managed care companies treating medical information as a marketing commodity, to be sold traded, or otherwise disclosed in ways that Montana patients, and doctors never intended.

**EXHIBIT (phs11a06)**

They will also find in their packets a letter from **Doctor Rausch** of Shelby, Montana, complaining about the same company and the same misuse of private medical records that the Washington Post describes.

**EXHIBIT (phs11a07)**

**Doctor Rausch** prescribed medication for his patient in Shelby and then suddenly out of the blue, both he and the patient received targeted mailings from an affiliate of the Eli-Lilly Pharmaceutical Company, suggesting that they substitute over the counter Dimetapp for the medication **Dr. Rausch** had prescribed. What angered **Dr. Rausch** the most was the dangerous self-serving suggestion by a pharmaceutical manufacture. What angered him the most as the Insurance Commissioner, was the way an insurance company had transferred a patient's private prescription records to a direct-mail marketer, pitching a competitive brand of medicine. When my office protested, the company agreed to quit using private records for such mailings into Montana, but the company steadfastly insisted that it was legal under Montana law,



and unfortunately, although he never admitted it to the company, he agreed with them.

Here's another example, a Missoula woman recently complained to his office, after applying for health insurance for herself and her son. As a part of her application, she had to disclose extreme sensitive medical information about both of them and she presumed that the company would protect her privacy. IT DIDN'T.

In a FAX to her place of work, while she was out of the office on vacation, the company announced in painful detail, that it was declining coverage because of her medical condition and that of her son. When she returned to the office and found the FAX in plain sight of her co-workers, she was so embarrassed that she immediately threw it in the trash can and then, still trying to preserve what was left of her privacy and dignity had to retrieve it.

Again his office convinced the company to apologize, but they NEVER convinced the company, that Montana law prohibits such careless disclosures of medical information. When they talk to a physician, it's in our very best interest to tell them the truth. If they are going to prescribe either drugs or treatment for us, they need to know the true nature of our health history and our potential for illness. What happens to that information, when we give it to a physician or a health insurance company right now? It ZIPS from computer to computer, from doctor to insurance companies to hospitals where any one can see it.

**SEN. FRANKLIN** mentioned the Great Falls article, and that in an average patient hospital record, 77 people see that thing. Many of those eyes belong to the insurance industry and it is his job to protect their private health care information when the insurance industry gets it. Private medical records need to be collected. They need to be analyzed. But right now in Montana they are being collected and shared with fewer safe guards than are video store records.

In fact if he tried to find out what movies, **SEN. BOHLINGER** rented the last time he used his video rental card, he would be in violation of Federal laws. Video records are protected for their privacy by those laws, as is **SEN. BOHLINGER'S** credit card, his credit record, and his motor vehicle record, but not his private health records in the State of Montana. The way in which we protect the privacy of our medical records is erratic and it's dangerous. To eliminate this clear and present danger to our citizens and our health care, we asked **SEN. FRANKLIN** to bring them **SB 103.**

Twenty-five years ago in Montana, our health care privacy was protected by our family doctors. He or she kept hand written notes. They put them in the file, they locked the file, they locked the door, they went home, and your private medical records were protected. We trusted them, not only because of the Hippocratic Oath, and the fundamental ethics of medicine, but because we knew them. They took care of our entire families, generations of our families. We asked their advise about our personal problems. Today in the revolution of health care delivery systems means that instead of Marcus Welby -- we have to place our trust in an entire network of insurers and health care professionals, both public and private.

The computer revolution means that our deepest secrets no longer exist in only one place and no longer can be protected by locking the door. Freedom of information is good. It's great in government and he believes in it. As long as there are compelling interest in the release of information, it should be done. But we and they as a Committee have a challenge today. The challenge is whether they will harness the information revolution in the transfer of information to improve and not impede our health care.

He thinks **SB 103** does this. **Senate Bill 103** restricts health insurance companies except in certain circumstances from releasing personal health care information to third parties - without permission. The release is restricted only if the information is personally identifiable. Current law contains loop holes that allows such transfers of personal health care information to virtually any third party. Worse current Montana law does nothing to protect the privacy of that information once it has been disclosed by insurers to third parties. **Senate Bill 103** closes those loop holes. It also harnesses the flow of information to safe guard our privacy and it harnesses it to strengthen not strain the very fabric of our health care system the bond of trust between the doctor and his patient.

This bill allows health care information to flow safely to improve care, to cut fraud, to insure quality and to foster research. The fundamental issue before the Committee today is will our health care records in the future be used to heal us, or to reveal us?

Montanans want to know and this bill gives the Committee an opportunity to decide. He hopes they will support the bill. There are going to be some opponents to this bill. He knows that Montanans want them to support this bill. He has talked about it for the last 18 months. He is so convinced that Montanans want them to support this bill that he will tell them his plan in terms of dealing with this issue. Should the bill die, he is

having drafted a Constitutional Initiative on Medical Rights, Medical Information Privacy for Montanans to vote on. Should that not make the ballot, he has already talked to groups that are interested in having the same Constitutional Initiative placed on the ballot during the year 2000. The vast majority of Montanans he has dealt with the last 18 months have on this issue believe that this is a serious threat to their way of life and their families' existence in the modern computer age. Is it? That is up to you to decide. But he does think it is an issue that needs to be addressed and needs to be addressed today. He will be happy to answer any questions they might have.

**Jim Smith, Representing Montana State Pharmaceutical Association, and Individual Pharmacists and Retail Drug Stores in Montana,** said he started hearing from their pharmacists about a year ago, about these very issues. They are very well discussed and described in an excellent chart in that November 16th addition of the Washington Post. They are very concerned. Today's pharmacy are highly automated, computerized operations. More so than your average doctors office. They have seen this change that **Mark O'Keefe, Commissioner of Insurance** is talking about over the last 10 years or so in the pharmacy industry. It used to be pretty common. In fact it used to be that 2/3rds of the people coming into the pharmacy were first party payers. Cash at the counter if you will for their prescription medicine. Now it has just about reversed itself over the last 10 years, to where now 2/3rd of the people who show up for prescription medications give the pharmacist a card, a little plastic card, they run through a computer. The information is transmitted to an insurance company and their problems begin. What happens to that information, who would screen it, who gets it, they don't know. Their pharmacists quite often don't know, but it is a concern of the pharmacist because they hear from their patients. They retain counsel on this and sought legal advice, and bumped into the same barriers the **Insurance Commissioner** spoke of. They wrote to the **Commissioner** and asked for his intercession and assistance in this. As the Committee can tell, he is working on it. He'd be happy to discuss any particulars on pharmacy that he is able to with the Committee, but let him just say in the interest of time that patient privacy is important to their pharmacist and their places of business. They want to see this bill moved forward. It is just as important, privacy is as important to them as Montanans. We have a Constitutional right to it in this state, he wants his and he thinks everybody in this room wants their privacy protected and so do 850,000 other Montanans out there. So they please urge their consideration of this bill.

**Andrea Merrill, Executive Director, Mental Health Association of Montana**, read her written testimony.

**EXHIBIT (phs11a08)**

**Verner Bertelsen, Montana Senior Citizens' Association**, said they have lived long enough without the information about themselves being circulated one way or another, that they don't need any extra information about their medication or what particular situation in life they are in. They support this legislation and urge the Committee to give it their best consideration.

**Mona Jamison, Representing Montana Chapter of the Physical Therapy Association and Shodair Childrens' Hospital**, said actually she is also present representing herself. She is shocked and she has a feeling that very few people in this room that are not shocked, because they know that there is a confidentiality privilege between a patient and their physician. Yet once that information for purposes of reimbursement leaves those office confines, we have the stories that have been told, and she has a feeling that if they were to take a vote of the people of Montana, most people would be a shocked as she is, and she considers herself fairly informed. And as an attorney, she understands that confidentiality provision that goes between a physician and a patient. She said it was interesting in Montana's Constitution and the public's right to know and individual privacy and that right of privacy by government cannot be invaded, unless there is a compelling state interest, very compelling. The right of privacy supercedes, and that is where the presumption is, unless there is a compelling right to know. So in our Constitution, as that right of privacy relates to Montana government. A foreign agency can disclose personal information, they have got to show that there is an absolutely compelling need for the state to know that. She urges the Committees support of this bill. It makes sense and it makes Constitutional sense and it makes Montana sense.

**Rebecca Moog, Representing Montana Womens' Lobby**, said the information age being what it is, privacy has become a concern in all of our lives. For women privacy matters of health and medical care have always been an issue. They support this bill as an effort to help protect all Montanans' privacy. Our private medical records should not be easily view by dozens or even hundreds of strangers working in insurance companies and other health care industries, nor should they be for sale. They urge them to support **SB 103**.

**Gloria Hermansen, Lobbyist, Montana Psychological Association**, said she won't repeat the things that have already been said.

She thinks as **Andrea Merrill** spoke to them about the potential stigma of mental health, mental illnesses even in today's day and age, and often a generalization of mental health diagnosis. What goes on between a patient and their psychologist should remain between that individual and their psychologist. The absolutely support this bill.

**Kip Smith, Associate Director of the Montana Primary Care Association**, said there is very little he can add to what the other proponents have already said. Their members believe this bill is an appropriate balance between insurance companies business needs and the right of all of us to have our personal medical records remain private. They encourage a do pass on **SB 103**.

**Mary McCue, Representing an Association of Licensed Professional Counselors** who also support this legislation.

**Jerry Loendorf, Representing the Montana Medical Association**, said one point he might be able to add to what has already been said, is if an individual can't be confident that the information they relay to their health care provider, who ever it may be, that it may be disclosed publicly, the system will break down because people will not have the confidence to make the disclosures that need to be made in order for them to obtain complete and full health care. This is an additional important reason for the passage of this bill.

**Jim Ahrens, President of the Montana Hospital Association**, said **MHA** supports the bill and they would urge the Committee's support of the bill also.

**Jacqueline T. Lenmark, Lobbyist, American Insurance Association**, said the American Insurance Association is a trade association comprising some 350 property and casualty insurance companies. They have different concerns about the disclosure of medical information. They support this bill. They think it was carefully and thoughtfully drafted, and they urge them to give the bill a do pass recommendation.

**Susan Witte, Representing Blue Cross and Blue Shield** said she has some testimony to submit for **Tom Ebzery, Representing the Yellowstone Community Health Plans**.

**EXHIBIT** (phs11a09)

This law originally was an NAIC model law. She believes there is something like 6 or 8 states that have this law on the books. It was adopted by Montana in 1981. Its main purpose is to protection of privacy. Blue Cross/Blue Shield adheres very

strongly to protection of privacy. In fact it is grounds for immediate dismissal if anybody in the company discusses personal individually identifiable health care information. However, they do believe there are some amendments necessary to let this bill allow insurers to carry out their insurance functions. There is a section of the bill and the definitions on insurance function which does carry out a number of insurance functions, it is on Page 3, (10). They thank the State Auditor's Office for putting in that definition.

Their concern with the bill regards in part requiring someone to get separate written signed, dated, disclosure forms for any time any of that information may be re-disclosed. It might be hard at times to find, for instance herself, some 20 months down the line, if an insurance company might need her individual health care information for identified functions for those portions of the bill. They don't have any amendments today. They would suggest that a Subcommittee be formed of this Committee, so that they have an opportunity to submit a few further amendments. Again **Tom Ebzery**, with the Yellowstone Community Health Plan would support this bill going into a Subcommittee with amendments.

**Don Allen, Representing Montana Medical Benefit Plan**, in support of this bill. As mentioned by the previous speaker, he notes that **MMBP** is very strict in regard to releasing any information of a privacy nature and does not distribute it at all outside of the company, or by request of the Auditor's Office. In terms of the amendments, he has not had a chance to review them. He has discussed one or two of those. One in particular that was just mentioned, by Blue Cross/Blue Shield, they would certainly support their efforts, or their suggestion as appointing a Subcommittee to clarify those points. They want to be on the record in support of the bill.

**Sami Butler, Representing the Montana Nurses' Association**, said in the interest of time she won't tell them a story, but she will tell the Committee that the nurses in Montana believe that this is a good bill for their patients.

#### **Opponents' Testimony:**

**Greg A. Van Horssen, Lobbyist, State Farm Insurance Company**, said given the number of proponents and the distance to the door, he thought about changing his position on the bill. But State Farm has asked him to come to the hearing and raise a few concerns. He can tell the Committee that State Farm takes the re-disclosure of health care information very seriously. It is an offense in

this company that is subject to immediate termination if that type of thing occurs. So he doesn't want anybody on the Committee to think that State Farm doesn't take this seriously, not does he want anybody on the Committee to think that State Farm is vehemently opposed to every aspect of this bill.

There are perhaps some technical issues raised by Blue Cross/Blue Shield, raised by himself with **Russell Hill**, that he is confident they will be able to work out. Some of those things are for instance the prohibition of collecting personal and privileged information as that is defined in the statute. That raises a concern under some circumstances and they hope to be able to clear that up and perhaps bring some clarifying language, with the agreement of the Sponsor. Secondly they have some concerns about the number of times "reasonable necessary" is used in the bill. As everyone knows, "reasonable, reasonable necessary" all of these terms are subject to individual interpretation. There is a concern there, perhaps they will be able to flesh out in some discussions, if time permits. Finally, the main concern from their perspective is the record requirement. He is not saying the record requirement is something that should be done away with in the bill. He just wants the Committee to understand that any time that there was a new requirement placed upon any business, it raises costs. Those raised costs are passed along. He is raising that point of concern. He confident they will be able to sit down with the Sponsor, and **Mr. Hill** and others interested in amendments to this bill and come back to the Committee with something everybody can agree on.

*{Tape : 3; Side : A; Approx. Time Counter : 0 - 36}*

**John Metropoulos, Representing Farmers Insurance Group of Companies**, said he also wants to suggest what has been termed as "soft opposition" to this bill. They support the concepts. Many of their customers are Montanans, and he is a Montanan, and they understand the need and the right to privacy. But the devil is in the details and there are some details in this bill that make it, as written unacceptable. He has spoken some with **Mr. Russell Hill** and he thinks they have an agreement that they can at least meet and try to resolve the difficulties they have with the bill. For example in Section 3, on Page 8, Line 17, the new language appears to require the disclosure to the individual, the name and perhaps more of "consulting experts." An attorney hired to defend a case in litigation hired to consult with, now under the rules of civil procedure that's not required. And that may give an unfair advantage. **Mr. Russell Hill** tells him that is not the intent of the bill. He would like the opportunity to work with

him to come up with language to make sure that is not the effect of the bill.

**Mark Baker, Representing, American Council of Life Insurance,** said they were in opposition to the bill as it is presently written. They also would be in support of working on the definitions and clarifying the language in the bill in a Subcommittee.

***{Tape : 2; Side : B; Approx. Time Counter : 0 - 5}***

**Questions from Committee Members and Responses:**

The Committee members asked some questions of the proponents and opponents, at this point there was a problem with the Sony tape in the Lanier recording device (defective tape would not record).

**Closing by Sponsor:**

**SEN. EVE FRANKLIN** said the testimony is very interesting and gets to the heart of the situation and how our living our lives and our personal information is a very personal matter. She listed what the bill does not do with over a dozen functions. Nothing is precluded without authorization. She said the bill doesn't stop the computer age, but offers a few gates of protection concerning the computerization of all of our medical information and privacy of records. She would like to be allowed some time to discuss and work with the parties involved, with the hopes that they may be able to review and resolve the objections and amendments they mentioned, prior to having the recommended Subcommittee appointed. Some of the issues are not a hill to die on, however she didn't think that keeping records for a 3 year period of time was not a lot to ask for.

***{Tape : 2; Side : B; Approx. Time Counter : 5 - 10; Comments : defective sony tape}***



**ADJOURNMENT**

Adjournment: 5:00 P.M.

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SEN. AL BISHOP, Chairman

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MARTHA MCGEE, Secretary

AB/MM

**EXHIBIT** (phs11aad)